

I
**DRAFT AGREEMENT TO PROVIDE CULTURAL ARTS OR ARTS PROGRAMMING
IN PUBLIC PLACES IN ALAMEDA**

THIS AGREEMENT TO PROVIDE CULTURAL ARTS OR ARTS PROGRAMMING IN PUBLIC PLACES IN ALAMEDA is entered into this ____ day of _____, 20____, between the City of Alameda ("City") and [name of not for profit organization ("Organization")] with offices at _____.

WHEREAS, City has adopted a Public Art Ordinance that allows developers of projects in Alameda to make a monetary contribution to the City's Public Art Fund, in lieu of providing on site art; and

WHEREAS, the Public Art Ordinance allows the Public Art Fund to be used for cultural arts and arts programming so long as the cultural arts or arts programming is accessible to the public at no charge and located in the City of Alameda; and

WHEREAS, cultural arts or arts programming may include, but is not limited to, performance arts, theater, dance, music, literary arts, poetry, reading and storytelling, film and video, screenings and installations, education, art lectures and presentations, special events such as festivals and celebrations, and artist in residence programs; and

WHEREAS, Organization has submitted a proposal to provide cultural arts or arts programming; as more particularly described in the Organization's Proposal dated _____ and attached hereto as Exhibit A; and

WHEREAS, the City's Public Art Commission reviewed the Organization's Proposal and recommended to the City Council that it enter this Agreement; and

WHEREAS, City has allocated funds from money it has received under its Public Art Ordinance for the cultural arts or arts programming described in the Organization's Proposal; and

WHEREAS, on _____ the Alameda City Council approved the recommendation of the Public Art Committee to select the Organization; and

WHEREAS, Organization wishes to provide cultural arts or arts programming under the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions of this Agreement, the parties agree as follows:

Article 1 Scope of Services

1.1 Organization's Obligations

- a. Organization will provide the following (as applicable) related to the production of the cultural arts or arts programming as set forth in the Organization's Proposal, including, but not limited to, artistic and administrative personnel salaries, wages and/or fees, materials related to the office, rehearsal or necessary office space, general office supplies related to the project, insurance costs as required, marketing, promotion and publicity expenses and in strict compliance with all terms and conditions in this Agreement.
- b. The Organization shall secure any and all required licenses, permits and similar legal authorizations at the Organization's expense as may be necessary for the Organization's Proposal.
- c. The Organization shall provide required insurance in amounts and limits specified in Article 5 and Exhibit C.
- d. Artist shall be available with reasonable advance notice for a reasonable number of meetings required to carry out the Organization's Proposal.

1.2 City's Obligations

- a. The City shall provide the funding through its Public Art Fund for the Organization's Proposal in the amount of \$ _____. None of these funds shall be used for activities occurring outside of the City of Alameda, social functions, parties, receptions, fundraisers, food and beverage or out of state travel.

1.4 Budget and Payment

- a. The Organization shall prepare a budget, with its costs itemized. The Budget shall be attached to this Agreement as Exhibit B.
- b. If the Organization incurs costs in excess of the amount listed in the Budget, the Organization shall pay such excess from the Organization's own funds unless such costs were the result of actions or inaction of the City.
- c. The payment schedule is as set forth in Exhibit C, Payment Schedule, which is incorporated herein by reference

Article 2 Insurance

2.1 General

- a. Terms for the procurement and duration of insurance are provided in Exhibit C.
- b. Required insurance policies are described in Exhibit C.

2.2 Indemnity

- a. The Organization shall indemnify the City, its respective officers, agents, and employees, from any claims brought arising out of the breach of this Agreement

- or any negligent occurrence which occurs pursuant to the performance of this Agreement by the Organization, its employees, agents and volunteers.
- b. The Organization shall immediately notify the City of any written claim it receives regarding any matter resulting from or relating to its obligations under this Agreement. Each Party shall cooperate, assist, and consult with the other in the defense or investigation of any such claim arising out of or relating to the performance of this Agreement.
 - c. The indemnification shall include reasonable attorneys' fees and costs.
 - d. This indemnification shall survive the termination or expiration of this Agreement.
 - e. Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from a Party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages.

Article 3 Organization as an Independent Contractor

The Organization agrees that under this Agreement it is as an independent contractor and not as an employee of the City. The Organization acknowledges and agrees that it shall not hold himself out as an authorized agent of the City with the power to bind the City in any manner.

The Organization shall provide the City with the Organization's Tax Identification number and any proof of such number as requested by the City.

Article 4 Assignment of Agreement

The cultural arts and arts programming required of the Organization are personal and this Agreement shall not be assigned, sublet or transferred unless the City gives its prior written consent thereto. Any attempt by the Organization to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the City. This Article is not intended to prevent the Organization from using subcontractors to provide the cultural arts and arts programming provided the Organization has listed such subcontractors as part of its proposal.

Article 5 Termination

- a. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operation; superior governmental regulation or control; public emergence; or strike or other labor disturbances. Notice of termination of this Agreement shall be given to the non-terminating party in writing not less than ____ days prior to the effective date of termination.
- b. The City may terminate this Agreement without cause upon [60] days written notice to the Organization. The City shall pay the Organization for commitments made prior to the date of the termination, consistent with the schedule of payments set forth in Exhibit B of this Agreement.
- c. If either party to this agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the

right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have _____ days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate.

- d. If the Organization defaults for cause the Organization shall return to the City all funds provided by the City in excess of the expenses already incurred. The Organization shall provide an accounting of these expenses. Expenses claimed shall be reasonable, based on the schedule and the amount of work completed as of the termination date.

Article 6 Notices and Documents

Notices under this Agreement shall be delivered personally or through the [registered or certified mail, return receipt requested] mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a Party:

For the City:

For the Organization:

Notice shall be deemed effective on the date personally delivered or, if mailed, [three (3) days] after the postmarked date.

Article 7 Waiver

The Parties agree that a waiver of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

Article 8 Conflict of Interest

The Organization shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

Article 9 Amendments

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties.

Article 10 Choice of Law

This contract shall be governed by the laws of the State of California both as to interpretation and performance and any legal action shall be filed in Alameda County, California..

Article 11 Entire Agreement

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements and conditions between the Parties. No verbal agreements or conversation between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligation.

For City of Alameda, a Municipal Corporation

For Organization:

Name

Name

Title

Title

Date

Date

Exhibit A

Description of Proposal

Exhibit B

Budget and Payment Schedule

The City shall pay the Organization a fixed fee of \$_____, which shall constitute full and complete compensation for all cultural arts or arts programming furnished by the Organization under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and material provided prior to payment thereof:

- a. \$_____ upon the execution of this Agreement, [recognizing that the Organization will invest time and expense in implementing the Proposal].
- b. \$_____ after the cultural arts or arts programming has occurred.

Exhibit C

Insurance

General

- a. The Organization shall procure and maintain for the duration of this Agreement, at the Organization's expense, insurance in the kinds and amounts as provided in this Exhibit with insurance companies authorized to do business in California. Such insurance shall cover the Organization's employees, agents and volunteers. The City, its officials, employees and agents shall be named as additional insureds.
- b. The Organization's insurance coverage shall be the primary insurance as respects the City, its officials, employees and agents. Any insurance or self-insurance maintained by the City, its officials, employees and agents shall be in excess of the Organization's insurance and shall not contribute to the Organization's insurance. The coverage shall state that the Organization's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- c. The Organization shall furnish to the City a certificate of insurance with original endorsements affecting coverage for each of the insurance policies provided in this Exhibit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates must be current and the Organization must submit replacement or renewal certificates of insurance for all the policies expiring during the term of this Agreement. Each certificate shall clearly indicate that the Organization has obtained insurance in the type, amount and classification as specified in this Exhibit and that no material changes, cancellation, suspension or reduction in limits of insurance shall be effective except after [30] days prior written notice to the City.
- d. Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, and agents.
- e. Despite any changes to or cancellation of insurance, the Organization remains responsible for maintaining the required insurance coverage for the duration of the Agreement.
- f. Failure of the Organization to comply with any of the terms of Article 2 of the Agreement shall be considered a material breach of this Agreement and cause for its immediate termination.

Insurance Policies

- a. Commercial General Liability insurance policy, written on an occurrence form, including all the usual coverage known as:
 1. premises/operations liability
 2. products/completed operations
 3. personal/advertising injury
 4. contractual liability
 5. [broad-form property damage]

6. [independent contractor's liability]

Said policy must provide the following minimum coverage:

1. \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
 2. \$2,000,000 annual aggregate
- b. Automobile liability insurance policy, including coverage for owner, non-owner, leased or hired vehicles, providing the following minimum coverage:
1. \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage;
 2. \$2,000,000 annual aggregate
- c. Worker's Compensation and Employers' Liability insurance in accordance with the statutory requirements of the State of California, providing coverage for any and all employees of Organization.
- d. If, however, the Organization does not have any employees as defined by state statutes and regulations and does not wish to cover him/her/itself for Worker's Compensation, the Organization shall sign the following statement:

["I do not have, nor intend to have for the full term of this Agreement, any employees. Furthermore, I do not wish to obtain or be covered under any Worker's Compensation insurance coverage and, therefore, am signing this statement in lieu of providing the above require Worker's Compensation coverage."]

(Organization's authorized signature)

(Print Organization's name)]

The requirement for Worker's Compensation and Employers' Liability insurance shall be waived in writing upon submission of this signed statement by the Organization to the City.